

# **Committee on Resources**

## **Subcommittee on Fisheries Conservation, Wildlife and Oceans**

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### **Witness Testimony**

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**STATEMENT OF JACQUELINE SAVITZ, EXECUTIVE DIRECTOR  
COAST ALLIANCE  
BEFORE THE SUBCOMMITTEE ON FISHERIES CONSERVATION,  
WILDLIFE AND OCEANS  
UNITED STATES HOUSE OF REPRESENTATIVES  
REGARDING H.R. 3647, A BILL TO EXCLUDE PUMPKIN KEY FROM THE COASTAL  
BARRIER RESOURCES SYSTEM**

MAY 19, 1998

ON BEHALF OF THE FOLLOWING ORGANIZATIONS:

- American Littoral Society, Highlands, NJ
- Big Pine Key Civic Association, Inc. Big Pine Key, FL
- Center for Marine Conservation, Washington, DC
- Clean Ocean Action, Highlands, NJ
- Florida Keys Citizens Coalition, Key Colony Beach, FL
- Florida Keys Environmental Fund, Islamorada, FL
- Gulf Restoration Network, New Orleans, LA
- Key Deer Protection Alliance, Inc., Big Pine Key, FL
- ManaSota-88, Inc., Palmetto, FL
- Ocean Advocates, Dickerson, MD
- Natural Resources Defense Council, New York, NY & Washington, DC
- North Beach Neighborhood Ass'n, Inc., New Smyrna Beach, FL
- North Carolina Coastal Federation, Newport, NC
- Reef Relief, Key West, FL
- Sea Turtle Survival League, Caribbean Conservation Corporation, Gainesville, FL
- Sierra Club National Marine Wildlife and Habitat Committee
- Sierra Club, Midwest, Madison WI
- South Carolina Coastal Conservation League, Charleston, SC
- Upper Keys Citizens Association, Key Largo, FL
- Volusia-Flagler Environmental Action Committee, Inc., New Smyrna Beach, FL

### **Introduction**

Good morning. My name is Jacqueline Savitz and I am the Executive Director of the Coast Alliance, a national environmental coalition that works to protect the resources of the nation's four coasts: Atlantic, Pacific, Great Lakes, and Gulf of Mexico. I greatly appreciate the opportunity to offer testimony regarding H.R. 3647, a bill to delete a mangrove island from the Coastal Barrier Resources System (CBRS). I am speaking today on behalf of the Coast Alliance

and twenty local and national conservation and citizen organizations.

The Coast Alliance has a long track record with the CBRS. We resolutely supported its creation in the 1980's and worked hard to ensure its expansion in 1990. More recently we have worked to educate the public about the value of the Coastal Barrier Resources System (CBRS) and have won a law suit against the Department of Interior (Interior) for making illegal changes to the CBRS maps. I am here today to oppose H.R. 3647 and discuss why the passage of this bill would undermine the integrity of the CBRS.

The issue under consideration is simple: Should American taxpayers subsidize the development of Pumpkin Key, a mangrove island that is part of the fiscally prudent and environmentally sound Coastal Barrier Resources System? The U.S. Congress has already made this decision and the answer is no. The ultimate question is: Was Pumpkin Key inappropriately included in the CBRS?

The Coast Alliance and the fourteen groups that we represent today argue that: (1) Pumpkin Key was rightly included in the CBRS in 1990; (2) its exclusion from the CBRS runs counter to Congressional intent, putting human life and property at risk; and (3) the removal of Pumpkin Key undermines the integrity of the CBRS itself. For these reasons, which are explained in more detail below, we strongly recommend an unfavorable Subcommittee report on H.R. 3647.

## **Background**

The fact is that any lay person could merely look at a photo of the island, with Key Largo in the background and determine that Pumpkin key is not developed. Developers claim that the island was developed prior to the time of its inclusion within the System and would have you believe that this is a valid technical correction to the CBRS. Nothing could be further from the truth!

The Coastal Barrier Resources Act of 1982 (CBRA), 16 U.S.C. Section 3501 et seq. (1994) (Pub. L. 97-348), established the Coastal Barrier Resources System in order to achieve three goals: to minimize the loss of human life by discouraging development in high-hazard areas, to protect fragile natural resources along the coast, and to reduce wasteful federal expenditures. *Undeveloped* coastal barriers included in the CBRS are prohibited from receiving federal subsidies for *new, private* construction. The CBRS does not prevent development from occurring, it prevents the distribution of federal funds, such as federal flood insurance, for construction. The developer is free to obtain private insurance for new development inside the System.

In 1990, Congress passed the Coastal Barrier Improvements Act (CBIA) as an amendment to the CBRA. The CBIA added Pumpkin Key (unit FL-35), among other undeveloped parcels to

the CBRS. Section 3503 of the statute defined "undeveloped coastal barrier" to mean:

(A) a depositional geologic feature (such as a bay barrier, tombolo, barrier spit, or barrier island) that - (i) is subject to wave, tidal, and wind energies, and (ii) protects landward aquatic habitats from direct wave attack; and

(B) all associated aquatic habitats including the adjacent wetlands, marshes, estuaries, inlets, and nearshore waters; but only if such features and associated habitats contain few manmade structures and these structures, and man's activities on such features and within such habitats, do not significantly impede geomorphic and ecological process.

Under the CBRA, the United States Fish and Wildlife Service (F&WS) is authorized to consider, and make recommendations as to whether parcels of property should be considered undeveloped, and therefore included in the CBRS. To this end, the F&WS may consider whether there are fewer than one structure per five acres of fastland. 50 Fed. Reg. 8700 (March 4, 1985). The Secretary of Interior defined "structure" to mean a legally authorized building larger than 200 square feet in area, regardless of the number or size of housing units it contains. H. R. Rep. No. 101-657(I), p.6. *See also* 44 CFR 71 (Oct. 1, 1996). The F&WS may also consider whether there was a full complement of infrastructure on the parcel prior to its inclusion in the System. A full complement of infrastructure includes electric lines, water lines, sewer pipes/septic systems and paved roads. Congress was right to include Pumpkin Key in the System in 1990 and it is the decision of the Congress, not the F&WS to determine whether a parcel should be remain within the CBRS.

Pumpkin Key is a mangrove island near Key Largo, Florida. Pumpkin Key is clearly *undeveloped*. Development on such islands is risky because of their vulnerability to storms. In fact, such development leads to property damage and potential loss of life. H.R. 3647 asks Congress to reverse its prior decision and call this island "developed" and delete it from the CBRS, thereby opening it up to receive some of the fifty federal subsidies available.

If Congress chooses to delete Pumpkin Key from the System, it will encourage risky development on this hazard prone mangrove island. H.R. 3647 would shift the risk of development from the developer to the American taxpayer. If the owner of Pumpkin Key wishes to cut down buttonwood mangroves to make room for houses, he is free to do so. He is also free to get private insurance for the project. The 11 sites that will become homes may be flooded repeatedly and the owners will seek payment from the American taxpayer if Uncle Sam subsidizes this development. Once flood damages are repaired, there will be another storm, it is just a matter of when. Remarkably in recent correspondence, the Fish and Wildlife Service has changed its position and opted to call this island developed. We feel that this policy decision is a stretch of existing criteria, runs counter to the intent of the law, and undermines the integrity of the System. We urge this Subcommittee to exercise its independent judgment and reject H.R. 3647.

## **Findings**

Specifically, the Coast Alliance and citizen groups across Florida support Pumpkin Key's continued inclusion in the System for the following reasons:

### **(1) Pumpkin Key was rightly included in the System as it was clearly undeveloped in 1990.**

*In 1990, the island met the test that no more than one structure per five acres may be present in order to be classified as undeveloped and be part of the CBRS, and it still does today.*

According to an October 6, 1995, letter to Senator Robert Graham (D-Florida) from Pumpkin Key's agent, "the island's fastland acreage equals 25.56 total acres." There are three residences, two storage sheds, and two tennis courts on the island. Furthermore, according to the F&WS, only three of the buildings are valid "structures" under F&WS criteria, and the island (and unit as a whole) does not exceed the more than one structure per five acres criterion. Jan. 28, 1998 letter from F&WS to Rep. Deutsch, Feb. 20, 1996 letter from F&WS to Sen. Graham.

*The island does not have sufficient infrastructure that would define it as "developed" and would keep it out of the CBRS.*

Pumpkin Key does not meet the "full complement of infrastructure" criterion because it does not have paved roads. The F&WS stated in an August 11, 1997, letter that "[a]t the time of its inclusion in the System, based on the best information available at the time, Pumpkin Key was correctly mapped as an undeveloped coastal barrier." F&WS went on to state that the island's lack of paved roads kept Pumpkin Key from meeting the full complement of infrastructure criterion. The existing criteria should not be diluted or compromised. Allowing the removal of a mangrove island because it has a golf cart path and a subaqueous utility line runs counter to Congressional intent to preserve undeveloped coastal barriers.

The infrastructure criterion was designed to address ongoing construction at the time of inclusion. However, in this case, an undeveloped mangrove island is being proposed for removal despite the fact that there was no ongoing development at the time of inclusion in the system. Additionally, in the Feb. 20, 1996 letter from F&WS to Sen. Graham, the Service said, "Intensive capitalization is a consideration only when geomorphic ecological processes are altered to the extent that the long-term perpetuation of the coastal barrier is threatened. The development and potential development of Pumpkin Key at the time of its inclusion in the System did not significantly impede geomorphic and ecological processes; therefore intensive capitalization was not a consideration for excluding Pumpkin key from the System." Now, the F&WS is choosing to create a policy exemption for Pumpkin Key by essentially waiving the

paved roads guideline from its "full complement of infrastructure" criterion. If Congress approves this, it will set a dangerous precedent and undermine the System's integrity. The bottom line is that the plain language of the statute trumps the F&WS criteria. Therefore, Congress should apply its statutory standard of "undeveloped coastal barriers" and keep Pumpkin Key within the System.

***"Plans" to develop an island do not trigger removal from the CBRS.***

Developers argue that they had plans to develop Pumpkin Key prior to its inclusion in the CBRS. However, plans do not equal development. In fact, CBRS criteria reject the concept of phased development and the F&WS stated that, "[p]reparing plans to develop or acquiring permits to build do not constitute development as defined by the delineation and mapping criteria." Feb. 20, 1996 letter to Sen. Graham. The undeveloped mangrove island was properly included in the CBRS. The developer is still free to build on this property, but at its own risk, not the taxpayer's.

***Information that Pumpkin Key was being added to the CBRS was available to all interested parties for review and action at the time of inclusion.***

Lack of knowledge of inclusion is not a criterion for removal and the burden was on the developer to make an argument for exclusion at that time. Pumpkin Key representatives did not oppose its inclusion within the CBRS, despite opportunity to do so. The F&WS notified Monroe County about Pumpkin Key's inclusion in the CBRS, and received comments regarding the 1990 Coastal Barrier Improvements Act from individuals and organizations throughout the Florida Keys, but none regarding Pumpkin Key specifically. Pumpkin Key's developers should have known about its inclusion.

**(2) Exclusion of Pumpkin Key from the fiscally prudent and environmentally sound Coastal Barrier Resources System runs counter to Congressional intent.**

***Removing this unit from the CBRS would be a taxpayer rip-off, allowing the developers access to federal subsidies for their risky venture.***

Coastal areas not in the CBRS cost the federal taxpayer roughly \$82,000 per developed acre. Some of these costs come from the National Flood Insurance Program (NFIP). The NFIP is one of the largest domestic liabilities behind the Social Security System and it required a major taxpayer bail-out in the 1980's. Extension of additional federal flood insurance for high risk development further impacts the fund, places an unfair burden on taxpayers, destroys critical habitat, and invites human tragedy.

***Encouraging development on Pumpkin Key puts Americans in harm's way and does so at the expense of the U.S. Treasury.***

One of the System's three objectives is the protection of human lives. Therefore, the System was designed with human safety clearly in mind. Since there are no roads or car access to the island, fleeing it in case of a hurricane would be perilous and extremely difficult. Removal of Pumpkin Key from the CBRS would create an exception for isolated coastal barriers, a precedent that contradicts Congressional intent to minimize the loss of human life by discouraging development in high-hazard areas. Government support of such a project would convey a false sense of security and make the federal government culpable for the consequences.

### **(3) Removal of Pumpkin Key undermines the integrity of the Coastal Barrier Resources System.**

*The Coast Alliance and citizen groups across Florida are gravely concerned about the policy implications of creating an exemption from the existing criteria for Pumpkin Key's developers.*

As you know, federal flood insurance is a major federal subsidy, which encourages coastal development. The CBRS protects coastal areas by denying this expensive subsidy. If Congress chooses to label Pumpkin Key as "developed" despite the fact that aerial photos clearly show the pristine nature of this mangrove island, other coastal barriers will become easy targets for deep pocket developers, who would rather have Uncle Sam subsidize risky development, than bear the risk themselves. The Coast Alliance urges this Congress to maintain the integrity of the Coastal Barrier Resources Act and reject H.R. 3647 as fiscally irresponsible.

*Coastal barriers, such as Pumpkin Key, are important to fisheries and wildlife.*

Coastal wetlands support more than 75 percent of the nation's commercial fish and shellfish at some point during their life cycles. Barrier areas also provide critical habitat for a variety of wildlife--including 18 federally endangered species. Development usurps important habitats for threatened and endangered sea turtle and shore bird nesting and egg laying and can destroy food sources for coast-dependent species. The federal government should not encourage such destruction.

### **Conclusion**

The Coast Alliance is dedicated to educating the public and reminding Congress of the value of the System and the costs associated with its piecemeal destruction. Despite the recent policy flip flop of the F&WS, it is important to note that in 1996 the Service stated that, "Pumpkin Key was included in the System because it met the definition of less than one structure per five acres of fastland for Unit FL-35; it was not intensively capitalized; and its shoreline had not been intensely manipulated. Also, it was not a cluster of development. Therefore, it was correctly placed in the System."

In conclusion, Pumpkin Key should not be removed from the system because it does not meet the density or infrastructure criteria. There were no paved roads, and the mere existence of a subaqueous utility line does not fulfill the criterion of a "full complement of infrastructure." Furthermore, the argument that a mangrove island of greater than 25 acres, having only three houses is "developed" does not pass the straight face test. Second, the goals of the CBRs--to minimize the loss of human life by discouraging development in high-hazard areas, to protect fragile natural resources along the coast, and to reduce wasteful federal expenditures--should trump any political pressure to allow taxpayer giveaways for unwise development. Third, deleting Pumpkin Key from the CBRs would undermine the integrity of the System.

Thank you Mr. Chairman for the opportunity to testify here today.

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